IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 694 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BENNETT, COLEMAN & CO LTD & 2 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR. KS NANAVATI with MR.PRABHAV MEHTA for Applicant(s) : 1 - 3.
MRS. ML SHAH, ADDITIONAL PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 15/02/2006

ORAL JUDGMENT

1. Rule. Mrs.Manisha L.Shah, learned Additional Public Prosecutor waives service of rule on behalf of respondents.

2. The applicants are before this Court being aggrieved

of a Criminal Case No.9137 of 2004 filed against the present applicants by one Shri D.R.Solanki, Government Labour Officer and Inspector appointed under Contract Labour (Regulation and Abolition) Act, 1970, Ahmedabad in the Court of learned Judicial Magistrate First Class, Court No.6, Ahmedabad dated 09.12.2004.

3. The learned advocate appearing for the applicants invited the attention of the Court to the facts of the case and emphatically submitted that on fateful day, i.e. on 08.11.2004, an accident took place at the construction site. It is submitted by the learned advocate that on the next date, i.e. on 09.11.2004, the complainant visited the site and without taking into consideration the circumstances, lodged a complaint which is under challenge on the same day, i.e. 09.12.2004. The learned advocate submitted that what is alleged against the present applicants is breach of Rule 81(1) of of the Contract Labour (Regulation and Abolition) (Gujarat) Rules, 1972. The learned advocate submitted that Sub Rule (1) of Rule 81 provides that:

> "81. **Notices** – (1) (i) Notices showing the rate of wages, hours of work, wage periods, dates of payment of wages, name and addresses of the Inspectors having jurisdiction and date of payment of unpaid

wages, shall be displayed in English and in Gujarati and in conspicuous places at the establishment and the work site by the principal employer **or the contractor, as the case may be.**"

The learned advocate for the applicants submitted that in fact, the applicant company had entered into a contract with one M/s.Sharad Construction Private Limited and had assigned the work to the contractor. Therefore, as provided in sub Rule (1) of Rule 81, the contractor to comply with the aforesaid provision. In the alternative he submitted that even assuming for the sake of argument that it was for the applicant company to comply with the aforesaid Rule then in that situation also, it was the **'principal employer'** who had to observe/adhere the Rule. He submitted that Form No.5 which is signed by the principal employer, an officer of the applicant company, viz. Mr.Ashok Solanki, holding the post of Senior Manager (Personnel) has signed as 'Principal Employer'. That being so, alongwith the company, that officer by name ought to have been impleaded in the complaint. He submitted that the applicants were not required to be impleaded as the accused.

The learned advocate vehemently submitted that the complaint is not bonafide as the same is filed without complying with Rule 83 which provides for:

> 83. **Collection of information**. - (1) The Board, Committee the Labour Commissioner or the Inspector or any authority under the Act shall have powers to call for any information or statistics in relation to contract labour from any contractor or principal employer at any time by an order in writing.
>
> (2) Any person called upon to furnish the information under sub-rule (i) shall be legally bound to do so."

The learned advocate submitted that if the authority had called for the information from the applicant company, its responsible officer could have furnished the same, which according to the learned advocate for the applicants, would have satisfied the authority and then the authority would not have filed the complaint.

4. The submissions made by the learned advocate do carry weight. The fact that a responsible officer of the rank of Senior Manager (Personnel) is available locally and the authority knew about the same, still the complaint is filed impleading the officers of the company from Mumbai does indicate that some extraneous consideration has weighed with the authority filing complaint. Let it be clarified that this Court has not

examined the merits of the matter. The applicant company is directed to furnish the name of the responsible officer who has signed Form No.5 as 'principal employer' in connection with the site of construction, qua which the present complaint is filed. It goes without saying that it will be open for the 'principal employer' to take all available defence in the proceedings.

5. The present application is partly allowed. The Criminal Case No.9137 of 2004 pending in the Court of learned Judicial Magistrate First Class, Ahmedabad is quashed and set aside, qua applicant Nos.2 and 3 only. The applicant No.1 company shall furnish all necessary details of the 'principal employer' – responsible officer at Ahmedabad within two weeks from the date of receipt of this order to the Court so as to see that the complaint is proceeded further and taken to its logical end in accordance with law. Rule is made absolute to the aforesaid extent only.

(RAVI R.TRIPATHI, J.)

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